



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0285]

RIN 1625-AA09

Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is modifying the operating schedule that governs the South Park Highway Bridge, on the Duwamish Waterway, mile 3.8, at Seattle, WA. This modification revises closure hours for the South Park Highway Bridge. This action improves movement of rush hour highway traffic while having minimal impact to maritime waterway traffic.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0285 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206-220-7282; e-mail [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil).

SUPPLEMENTARY INFORMATION:

## I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of Proposed Rulemaking
SNPRM	Supplementary notice of proposed rulemaking
§	Section
WSDOT	Washington State Department of Transportation

## II. Background Information and Regulatory History

On May 14, 2015, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled “Drawbridge Operations: Duwamish Waterway, Seattle, WA” in the Federal Register (80 FR 27619). We received one comment on the rule. No public meeting was requested, and none was held.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C 499. The South Park Highway Bridge is a double bascule leaf drawbridge, and provides 34.8 feet of vertical clearance at center span while in the closed position, 30 feet of vertical clearance at the extreme east and west ends of the navigable channel, and unlimited vertical clearance in the fully open position. Vertical clearances are referenced to mean high-water elevation (MHW). Horizontal clearance is 128 feet. The South Park Highway Bridge is subject to tidal influence, and has at least 15 feet of water depth at the bridge site at mean lower low water.

The drawbridge operating regulations at 33 CFR 117.1041(a) (2) currently states that the South Park Highway Bridge need not be opened for the passage of vessels from 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays.

The current drawbridge operating regulation was written to accommodate commuter patterns associated with morning and afternoon highway traffic associated with Boeing Plant

number 2 shift changes. As of 2011, this plant is no longer operational and therefore highway traffic densities have changed. King County owns and operates the South Park Highway Bridge, and requested a permanent change to the existing operating regulation. The rule modification will update drawbridge closure times to better meet current highway traffic demands. Modifying the existing drawbridge regulation will better meet the needs of current highway users, and current commuter traffic patterns, while meeting reasonable needs to maritime navigation. This modification improves movement of rush hour highway traffic while having minimal impact to maritime waterway traffic.

Vessel traffic on the Duwamish waterway consists of vessels ranging from small pleasure craft, sailboats, small tribal fishing boats, and commercial tug and tow, and mega yachts.

#### IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard received one comment on the proposed operating schedule change from Delta Marine Industries. The rule change to the existing South Park Highway Bridge operating regulation would represent a restriction on navigation related to Delta Marine Industries' business. Currently, the closure hours of the 1st Avenue South Bridge (6:00-9:00 a.m. and 3:00-6:00 p.m., the same hours as now proposed for the South Park Highway Bridge) are the limiting factor for access of large vessels between Delta Marine Industries and Elliott Bay. With the change to the closure hours for the South Park Highway Bridge, vessels arriving and departing Delta Marine Industries would be delayed/impacted based on a half hour transit time between South Park Highway Bridge and 1st Avenue South Bridge.

Delta Marine Industries agrees with the concept of modifying the closure hours for the South Park Highway Bridge in a way that reflects current usage. However, Delta Marine

Industries believes that matching the closure hours for the South Park Highway Bridge to those of the 1st Avenue South Bridge does not accommodate the needs of maritime users. Delta Marine Industries proposed revising the closure hours for the South Park Highway Bridge to 6:30-8:30 a.m. and 3:30-5:30 p.m., Monday through Friday except Federal holidays. King County agreed with Delta Marine Industries' proposal.

Therefore, the Coast Guard is modifying the drawbridge operating regulations at 33 CFR 117.1041(a) (2). The Coast Guard amends the opening schedule such that the bridge need not be opened for the passage of vessels from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays other than Columbus Day. This amendment will increase efficiency for current highway traffic demands in light of changed traffic patterns and ensure minimal impact to maritime waterway traffic. All other requirements regarding the South Park Bridge under 33 CFR 117.1041 will remain the same.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s. and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not

been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the fact that the change will add thirty minutes to each closure period for the drawbridge, minimally impacting vessels transiting the waterway. The change does not otherwise significantly alter the duration and time frame of the current closure schedule.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities because this rule will be in effect twice a day for a total of four hours when vehicle traffic is high. Vessels that can safely transit under the bridge may do so at any time.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.1041(a)(2) to read as follows:

§ 117.1041 Drawbridge Operation Regulation; Duwamish River; Seattle WA

(a) \* \* \*

(2) The draw of the South Park Bridge, mile 3.8, need not be opened for the passage of vessels from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday except, Federal holidays, other than Columbus Day.

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Dated: December 14, 2015

R. T. GROMLICH  
Rear Admiral, U. S. Coast Guard  
Commander, Thirteenth Coast Guard District

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